

1 LANCE P. MAISS
Nevada Bar No.: 4683
2 ARMSTRONG TEASDALE, LLP
50 West Liberty Street, Suite 950
3 Reno, Nevada 89501
Telephone No.: (775) 322-7400
4 Facsimile No.: (775) 322-9049
5 Email No.: lmaiss@armstrongteasdale.com
6 *Attorneys for Plaintiffs*

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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

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11 DOMINO'S PIZZA FRANCHISING
12 LLC, a Delaware limited liability
company; and DOMINO'S PIZZA
13 MASTER ISSUER LLC, a Delaware
limited liability company,

14 Plaintiffs,

15 v.

16 CALVIN YEAGER, an individual;
17 VALLEY PIZZA, INC., a Nevada
corporation; and LAKESIDE PIZZA,
18 INC., a California corporation,

19 Defendants.
20

CASE NO. 3:10-CV-00560-HDM-WGC

RENEWED MOTION TO ENFORCE
JUDGMENT PURSUANT TO FRCP 70
AND/OR FRCP 71 AND SANCTIONS

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22 COMES NOW, plaintiffs DOMINO'S PIZZA FRANCHISING LLC and
23 DOMINO'S PIZZA MASTER ISSUER LLC (collectively, "Domino's"), by and through
24 their counsel, Armstrong Teasdale LLP, hereby renews its motion for an order to compel
25 Mathew Matlock to transfer the telephone numbers (775) 265-2929 to Domino's, pursuant
26 to the Injunction Order and the Final Judgment issued by United States District Court for
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1 the Eastern District of Michigan ("Michigan District Court"), and registered with this
2 Court.

3 This renewed motion is based upon the Points and Authorities attached hereto, and
4 such further argument the Court may permit.
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7 DATED this 14th day of December, 2011.
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9 ARMSTRONG TEASDALE, LLP
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11
12 By: /s/ Lance P. Maiss
13 LANCE P. MAISS
14 50 W. Liberty Street, Ste. 950
15 Reno, NV 89501
16 Telephone No.: (775) 322-7400
17 *Attorneys for Plaintiffs*
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1 **POINTS AND AUTHORITIES**

2 **INTRODUCTION**

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4 This matter involves a dispute between a franchisor and franchisee, in which Final
5 Judgment has already been rendered in the United States District Court for the Eastern
6 District of Michigan ("Michigan Federal Court") in favor of Domino's, the franchisers of
7 the well-known pizza delivery business bearing the "DOMINO'S PIZZA" name and logo,
8 which included, among other things, the transfer of telephone numbers used by the
9 franchise locations back to Domino's.
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11 **The Defaulting Franchisees**

12 Defendants Calvin Yeager, Valley Pizza, Inc. ("Valley") and Lakeside Pizza, Inc.
13 ("Lakeside") had been the owner and operator of franchises of Domino's. Yeager was
14 President and sole owner of both Valley and Lakeside. Valley and Domino's were parties
15 to a Standard Franchise Agreement on or about October 17, 2007, by which Valley was
16 authorized to operate the Domino's franchise identified as Store No. 7415, located at 1281
17 Kimmerling Road, Suite 18-A, Gardnerville, Nevada 89460. ("Store 7415 Agreement").
18 A true and correct copy of the Store 7415 Agreement is attached as Exhibit 1. In
19 connection with the operation of Store No. 7415, Valley used the following telephone
20 number: (775) 265-2929. Lakeside and Domino's were also parties to a Standard
21 Franchise Agreement on or about January 26, 2007, by which Lakeside was authorized to
22 operate the Domino's franchise identified as Store No. 7972, located at 987 Edgewood
23 Circle, Unit A & B, South Lake Tahoe, California 95901. ("Store 7972 Agreement"). A
24 true and correct copy of the Store 7972 Agreement is attached as Exhibit 2. In connection
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1 with the operation of Store No. 7972, Lakeside used the following telephone number:
2 (530) 543-1235. As set forth in both the Store 7415 Agreement and the Store 7972
3 Agreement, Yeager personally guaranteed the performance of Valley and Lakeside.
4

5 After defaulting on the Store 7415 Agreement and the Store 7972 Agreement
6 (collectively, the "Franchise Agreements"), on or about November 13, 2009, Domino's
7 terminated both Franchise Agreements with defendants.
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9 **Failure to Comply with Post-Franchise Obligations**

10 Upon termination, the Franchise Agreements imposed a number of obligations on
11 Valley, Lakeside, and Yeager. In particular, Section 18.3(c) of the Franchise Agreements
12 required Valley, Lakeside, and Yeager to "notify the telephone company . . . in writing of
13 the termination . . . of your right to use all telephone numbers . . . relating to the Store and
14 to authorize in writing the transfer of these to [Domino's] or its franchisee or designee."
15 Further, Valley, Lakeside, and Yeager agreed under Section 18.3(c) to "execute any
16 written authorizations . . . in the form prescribed by [Domino's directing the telephone
17 company . . . to transfer all telephone numbers . . . [Domino's], its franchisee, or designee
18 upon the occurrence of" the termination of the Franchise Agreements. Additionally, in
19 Section 18.3(c) of the Franchise Agreements, Valley, Lakeside, and Yeager acknowledged
20 that Domino's has "the sole rights to and interest in all telephone numbers" used in
21 connection with the Stores.
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25 **Injunction Order and Final Judgment**

26 Notwithstanding the termination of the Franchise Agreements, defendants failed to
27 comply with post-term obligations contained therein. As a result, on December 2, 2009,
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1 Domino's commenced an action against the defendants in the Michigan District Court to
2 obtain, among other things, injunctive relief requiring defendants to comply with the post-
3 termination obligations, including the return of the telephone numbers. On January 25,
4 2010, Domino's obtained a preliminary injunction against defendants, requiring
5 defendants, as well as their agents, servants, and employees, and those persons and
6 entities in active concert or participation or privity with any of them, to comply with the
7 post-term obligations, including "to transfer the telephone numbers to Domino's . . ."
8 ("Injunction Order"). A true and correct copy of the Injunction Order is attached as
9 Exhibit 3.

12 Thereafter, Domino's obtained the Final Judgment against defendants, which made
13 the preliminary injunction from the Injunction Order a permanent injunction. A true and
14 correct copy of the Final Judgment is attached as Exhibit 4. On August 3, 2010, the Final
15 Judgment was registered with this Court.

17 **Defendants' Steps to Circumvent Enforcement of the Final Judgment**

18 Lakeside was dissolved on October 25, 2010, and Valley was dissolved on October
19 27, 2010, followed by a Chapter 7 petition for bankruptcy filed by Yeager on November
20 18, 2010 ("Chapter 7 Petition") in the United States Bankruptcy Court for the Eastern
21 District of California. ("California Bankruptcy Court"). Significantly, the telephone
22 numbers were not listed in the Chapter 7 Petition. As a result, Domino's focused on
23 enforcement of the Final Judgment against Mathew Matlock, the operator of the successor
24 business to the Domino's location in Gardnerville, Nevada under the name "Pronto
25 Pizza."
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3 **The California Bankruptcy Court Lifts Stay to Allow Domino's to Obtain**
4 **Telephone Numbers**

5 In response to Yeager filing his Chapter 13 Petition on August 9, 2011, Domino's
6 filed a motion to lift the automatic stay to enforce the injunction against defendants to
7 transfer the telephone numbers. In granting the motion, the California Bankruptcy Court
8 lifted the stay provisions to allow Domino's "to exercise and enforce all nonbankruptcy
9 rights and remedies to obtain possession of the property commonly known as (775) 265-
10 2929 and (530) 543-1235, including non bankruptcy proceeding to enforce [Domino's]
11 rights." ("California Bankruptcy Order"). A true and correct copy of the California
12 Bankruptcy Order is attached hereto as Exhibit 5. In Civil Minutes explaining his ruling,
13 Judge Klein stated that "Domino's terminated [Yeager's] interest in the telephone
14 numbers" before the Chapter 7 Petition was filed and "had only, at most, a bare
15 possessory interest" in them. A true and correct copy of the Civil Minutes are attached
16 hereto as Exhibit 6.
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19 **During Bankruptcy Proceedings in Nevada, Domino's Confirms Matlock's**
20 **Relationship with Yeager and Transfer of the Telephone Number**

21 Matlock also filed a petition for bankruptcy in this district on August 9, 2011¹.
22 According to the Transcript of Proceedings, dated September 23, 2011, for a 341 Meeting
23 of Creditors, Matlock stated that he worked for Yeager in South Lake Tahoe as a manager
24 of a Domino's franchise. (Transcript of Proceedings, P 15, L 12-18). Additionally,
25 Matlock stated that he purchased the entire pizza business in Gardnerville, Nevada from
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¹ Matlock's bankruptcy petition was filed the very same day as Yeager's petition – by the same counsel.

1 Yeager. (Transcript of Proceedings, P 12, L 9-14). Finally, Matlock stated that there was
2 no written agreement to transfer the telephone number – he just assumed it from Yeager.
3 (Transcript of Proceedings, P 13, L 13-24). A true and correct copy of the Transcript of
4 Proceedings is attached as Exhibit 7. Although his Declaration before the Nevada
5 Bankruptcy Court contradicted his previous statements, thus calling into question his
6 credibility, the Declaration did confirm that Yeager had apparently sold and transferred
7 the telephone number to Matlock, evidenced by a Bill of Sale, dated November 17, 2009 -
8 - the day before Yeager filed his Chapter 7 Petition. Additionally, Matlock's Declaration
9 set forth how the business assets were transferred first to Corey Reier, whom Matlock
10 worked for, and then eventually to Matlock, further evidenced by attached bills of sale. A
11 true and correct copy of the Declaration with attachments is attached hereto as Exhibit 8.

12 **The Nevada Bankruptcy Court Lifts the Stay**

13 Domino's filed a motion to lift the automatic stay to enforce the injunction against
14 Matlock to transfer the (775) 265-2929 telephone number to Domino's. The motion was
15 granted ("Nevada Bankruptcy Order"). A true and correct copy of the Nevada
16 Bankruptcy Order is attached hereto as Exhibit 9.

17 **Dominos' Again Requests Yeager and Matlock to Transfer 18 Telephone Numbers**

19 Although Domino's previous requests to transfer the telephone numbers were
20 ignored, after the California Bankruptcy Order, on November 17, 2011, Domino's made
21 another request to counsel for defendants and Matlock. A true and correct copy of the
22 letter is attached as Exhibit 10. Unfortunately, Domino's received no response
23 whatsoever.
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Domino's Continues to Suffer Prejudice

To date, the telephone numbers have never been transferred back to Domino's. Instead, the telephone numbers continue to be used by competing pizza businesses located in Gardnerville, Nevada and South Lake Tahoe, California. Matlock's refusal to transfer the (775) 265-2929 telephone number back to Domino's has caused - and still is causing - significant prejudice because that telephone number was associated with the former Domino's franchise, and the inability to obtain the use of that telephone number is negatively impacting Domino's ability to relicense the area where Valley operated a franchise.

ARGUMENT

I. ENFORCEMENT OF JUDGMENTS AND ORDERS UNDER RULES 70 AND 71

Fed.R.Civ.P. 70(a) provides that:

if a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done -- at the disobedient party's expense -- by another person appointed by the court. When done, the act has the same effect as if done by the party.

Fed.R.Civ.P. 70(b) provides that:

If the real or personal property is within the district, the court -- instead of ordering a conveyance -- may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

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2 Rule 70 gives the district court a discrete and limited power to deal with parties who
3 thwart final judgments by refusing to comply with orders to perform specific acts.
4 *Analytical Engineering Inc. v. Baldwin Filters, Inc.* 425 F.3d 443, 449 (7th Cir. 2005).
5 Fed.R.Civ.P. 71 provides that:

6
7 When an order grants relief for a nonparty or
8 may be enforced against a nonparty, the
9 procedures for enforcing the order is the same as
 for a party.

10 Thus, when an injunction is addressed to a nonparty and he is given notice of the
11 injunction, Rule 71 permits a district court to use “the same processes for enforcing
12 obedience to the order is if [he where] a party,” such as holding him in contempt for
13 violating it. *Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004). In summarizing the
14 application of these rules, along with Rule 65, the Court stated in *Judicial Watch, Inc. v.*
15 *U.S. Dep’t of Commerce*, 34 F.Supp.2d 28, 43 (D.D.C. 1998)(footnote omitted):

17 In certain circumstances, a judgment may be
18 enforced against nonparties. See 12 Charles
19 Alan Wright, Arthur R. Miller, *Federal Practice*
20 *and Procedure* § 3033, at 177. For example, as
21 stated in Federal Rule of Civil Procedure 65(d),
22 and injunction is binding upon the parties and
23 “upon those persons in active concert or
24 participation with them that receive actual notice
25 of the order . . .” A number of cases have
26 affirmed the courts’ authority to enforce their
27 orders on nonparties, based in part upon Federal
28 Rule of Civil Procedure 71. According to the
 court of Appeals for the Second Circuit, “it
 seems clear that Rule 71 was intended to assure
 that process be made available to enforce court
 orders in favor of and against persons who are
 properly affected by them, even if they are not
 parties to the action.” *Lasky v. Quinlan*, 558

1 F.2d 1133, 1137 (2nd Cir. 1977)(citing 7 J.
 2 Moore, *Federal Practice* at 71.10 (1975)). This
 3 view was adopted by the Ninth Circuit in
 4 *Westlake North Property Owners Ass'n v. City*
 5 *of Thousand Oaks*, 915 F.2d 1301, 1304 (9th Cir.
 6 1990), in which the court stated: "Rule 71 was
 7 designated to memorialize the commonsense
 8 rule that courts can enforce their orders against
 9 both parties and non-parties." *Id.* In particular,
 10 the courts are willing to enforce orders against
 11 nonparties when their nonparty status is used as
 12 a shield to frustrate the courts' orders. See,
 13 *Wilson Motor Co. v. Dunn*, 129 Okla. 211, 264
 14 P. 194, 197 (1928)("such an absurd contention
 15 could only prevail where might was right and
 16 where utter contempt was in vogue of all law,
 17 courts, and orderly procedure").

18 In that case, the Court held that its "orders compelling production of illegally withheld
 19 documents may be enforced not only against [Department of Commerce] but also against
 20 any nonparties to which the [Department of Commerce] transferred possession of
 21 responsive documents in an attempt to circumvent the FOIA and the orders of this Court."

22 *Judicial Watch* at 44.

23 II. HAVING FAILED TO COMPLY WITH THE INJUNCTION ORDER AND
 24 FINAL JUDGMENT, THIS COURT MUST ISSUE AN ORDER FOR MATHEW
 25 MATLOCK TO TRANSFER THE (775) 265-2929 TELEPHONE NUMBER TO
 26 DOMINO'S, OR ALTERNATIVELY, ORDER THAT DOMINO'S POSSESSES
 27 ALL RIGHT, TITLE AND INTEREST TO THE TELEPHONE NUMBER

28 A. Matlock Has Known All Along That the Telephone Number Was To Be
Returned To Domino's

In the case at bar, the Injunction Order and Final Judgment were properly
 issued by the Michigan District Court. The Final Judgment was properly registered with
 this Court. The Injunction Order and/or the Final Judgment have been served upon

1 Matlock and his counsel on several different occasions². Thus, there can be no doubt that
2 Matlock has known all along about the obligation to return the telephone number to
3 Domino's.
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5 Moreover, Matlock has been provided the necessary due process to proceed
6 against him in this Court. Rule 71 provides that the procedure for enforcing an order
7 against a nonparty is the same for the party. Rule 65 essentially says the same thing. That
8 procedure is governed by FRCP 5(b), which allows for pleadings filed after the original
9 complaint and other motions to be served upon the counsel of record for each party or
10 upon the party directly when not represented by counsel and is considered complete upon
11 mailing. *City Cab Co. of Colorado, Inc. v. All City Yellow Cab, Inc.*, 581 F.Supp.2d 1197,
12 1200 (M.D.Fla. 2008).
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15 B. Because Of His Relationship To Defendants, Matlock Is Subject To The
16 Injunction Order And Final Judgment

17 The Injunction Order – made permanent by the Final Judgment – applied to
18 the agents, servants and employees, and those persons and entities in active concert or
19 participation or privity with the defendants – as properly authorized under Rule 65. (See,
20 Exhibit 3). From the additional information obtained over the past few months, the close
21 relationship suspected between Matlock and defendants, particularly Yeager, was
22 confirmed. Matlock was first a manager for Yeager at the Domino's location in South
23 Lake Tahoe, California and then became the manager at, and eventual owner of, the Pronto
24 Pizza business at the Domino's location in Gardnerville, Nevada. (See, Exhibit 7).
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27 ² Although issues had been raised previously regarding service of the Injunction Order and Final Judgment, to
28 remove any doubt, on December 8, 2011, Domino's served Matlock and the defendants with the Injunction Order and
Final Judgment. (Exhibit 11).

1 C. Matlock Was Not A Bona Fide Purchaser

2 A “bona fide purchaser” has been defined as “one who pays valuable
3 consideration, has no notice of outstanding rights of others, and acts in good faith. *Black’s*
4 *Law Dictionary*, Fifth Edition (1979). Matlock has asserted that he purchased the
5 telephone number without any notice of Domino’s rights, paying consideration for it.
6 However, notice may be inferred, particularly in circumstances when the purchaser and
7 seller are intimately associated in business. *Berge v. Fredericks*, 95 Nev. 183, 188, 591
8 P.2d 246, 249 (1979). As referenced above, Matlock was a manager for Yeager at the
9 South Lake Tahoe Domino’s location and later acted as manager at the Pronto Pizza
10 business at the Domino’s location in Gardnerville, Nevada, a business he would eventually
11 come to own. (See, Exhibit 7). Thus, notice may indeed be inferred. Moreover, Matlock
12 could not have been acting in good faith, instead colluding with Yeager to avoid the
13 obligations owed to Domino’s – transfer of the telephone numbers. As stated in *Berge*, “in
14 order to be able to wrap around himself the cloak of a bona fide purchaser the buyer must
15 be acting in good faith. He must not be in collusion with the seller. Such a proposition is
16 axiomatic.” That’s exactly what went on here. Therefore, Matlock could not have been a
17 bona fide purchaser.
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22 D. Since Yeager Never Owned The Telephone Numbers, He Could Not Transfer
23 The (775) 265-2929 Telephone Number To Matlock

24 Even if Matlock was a bona fide purchaser, Yeager could not have transferred
25 the (775) 265-2929 telephone number to him anyway. Not only were the telephone
26 numbers not the property of Yeager on the date of the Chapter 7 Petition, Yeager never
27 had any ownership interest in the telephone numbers. It is well established that a party
28

1 wrongfully in possession of property of another does not have any right, title or interest in
2 such property. Under Section 18.3 of the Franchise Agreements, Yeager clearly agreed
3 that the telephone numbers were the property of Domino's and not his property, and
4 Yeager agreed to transfer the telephone numbers back to Domino's upon termination of
5 the Franchise Agreements, which occurred on November 13, 2009. (See, Exhibits 1 and
6 2). Yeager had no rights or interest in the telephone numbers. It is well established that a
7 party wrongfully in possession of property of another cannot convey good title to such
8 property to a third party. See, *Alamo Rent-A-Car, Inc. v. Mendenhall*, 113 Nev. 445, 937
9 P.2d 69 (1997); *Welch v. Cayton*, 395 S.E.2d 496, 501 (W.Va. 1990)("the old rule that a
10 thief cannot give title remains"); *Bergeron v. Aero Sales, Inc.*, 205 Ore.App. 257, 261-66
11 (transferor of property belonging to another could not convey title to such property), cert.
12 denied, 341 Ore. 548 (2006); *Inmi-Etti v. Aluisi*, 63 Md.App. 293, 300-305 (1985)(holding
13 that transferee of converted goods does not obtain title to such goods); *Schrier v. Home*
14 *Indemnity Co.*, 273 A.2d 248, 250 (D.C.App. 1971)("a possessor of stolen goods, no
15 matter how innocently acquired, can never convey good title"); 18 Am. Jr.2d Conversion
16 (2004) §5, p. 158 (title of the owner of the property remains unaffected by act of
17 conversion).

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22 The California Bankruptcy Court has already agreed³, holding that Yeager's
23 interest in the telephone numbers had been terminated. (See, Exhibit 6). Thus, Yeager
24 never conveyed any right, title or interest in the (775) 265-2929 telephone number to
25 Matlock. In turn, Matlock has no ownership interest to the telephone number. Therefore,
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³ Presumably, the Nevada Bankruptcy Court did as well in lifting the stay in Matlock's bankruptcy.

1 the (775) 265-2929 telephone must properly be returned to Domino's.

2 E. Matlock And Counsel Should Be Sanctioned

3 To date, there has been no compliance whatsoever. To the contrary,
4 defendants and Matlock, by and through their counsel⁴, have purposely avoided
5 compliance with the Injunction Order and Final Judgment by transferring the telephone
6 numbers to affiliated parties (Matlock) prior to seeking bankruptcy protection and seeking
7 to delay enforcement before this Court in the process. As a result, not only has Domino's
8 been denied its rights under its Franchise Agreements, the Injunction Order, and Final
9 Judgment, it has incurred significant attorney's fees and expenses. Therefore, Domino's
10 requests this Court to award sanctions against Matlock and counsel.
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13 CONCLUSION

14 Domino's has been trying to enforce its rights as the Franchisor for several years
15 now. Even with an Injunction Order and a Final Judgment to enforce transfer of the
16 telephone numbers, Domino's has still been denied its rights under the law. Mathew
17 Matlock has possession of the (775) 265-2929 telephone number. However, he did not
18 properly acquire the telephone number. In fact, he does not have true ownership to it;
19 Domino's does – by contract and by law. Moreover, through his relationship with
20 defendants, Matlock has been subject to the Injunction Order and Final Judgment all
21 along, requiring a return of the telephone number to Domino's.
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24 Therefore, Mathew Matlock must be ordered to turn over the (775) 265-2929
25 telephone number to Domino's, pursuant to Rules 70 and 71. Alternatively, Domino's
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27 ⁴ Counsel apparently represented the parties in the transfers of the telephone numbers, creation of successor pizza
28 business entities, represented all defendants and related parties in these proceedings, and filed the simultaneous
bankruptcy petitions for Yeager and Matlock.

1 requests that this Court simply issue an order that Domino's is the rightful owner of the
2 telephone number, pursuant to Rule 70(b).

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4 Finally, Domino's hereby requests sanctions against Mathew Matlock as well as his
5 counsel for their conduct during this litigation.

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8 DATED this 14th day of December, 2011.
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11 ARMSTRONG TEASDALE, LLP
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13
14 By: /s/ Lance P. Maiss
15 LANCE P. MAISS
16 50 W. Liberty Street, Ste. 950
17 Reno, NV 89501
18 Telephone No.: (775) 322-7400
19 Attorneys for Plaintiffs
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21
22
23
24
25
26
27
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